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6  
7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF TEXAS**  
9 **DALLAS DIVISION**  
10

11 TRACY GRIFFITH CONSULTING LLC  
d/b/a ASCENDIUM GROUP,

12 PLAINTIFF,  
13

14 v.

15 ONE JET, INC. f/k/a PRIMAIR, INC.,

16 DEFENDANT.  
17

Case No. 3:16-cv-03044-C

**DEFENDANT ONE JET, INC.'S  
ORIGINAL ANSWER AND  
VERIFIED DENIAL AND  
COUNTERCLAIM**

18 **TO THE HONORABLE JUDGE OF SAID COURT:**

19 Defendant and counterclaimant ONE JET, Inc. f/k/a PRIMAIR, INC. (hereinafter "One  
20 Jet" or "Defendant"), through its counsel, answers the Original Petition, Suit on Sworn  
21 Account, and Requests for Disclosure (the "Petition") of Plaintiff TRACY GRIFFITH  
22 CONSULTING LLC d/b/a ASCENDIUM GROUP (hereinafter "Ascendium" or "Plaintiff"),  
23 as set forth below, and hereby brings a counterclaim against Ascendium. Unless specifically  
24 admitted, Defendant denies each of the allegations of Plaintiff's Petition.

25 **I. ANSWER**

26 **DISCOVERY PLAN AND CLAIM FOR RELIEF**

27 1. In answer to paragraph 1, Defendant admits that Plaintiff seeks a discovery plan  
28 pursuant to Texas Rule of Civil Procedure 190.3, but alleges that the rule is not

1 applicable as this action was removed to the U.S. District Court for the Northern District of  
2 Texas, Dallas Division, under 28 U.S.C. § 1441(b), on October 31, 2016. Defendant denies  
3 any liability with respect to Plaintiff's claim for monetary relief.

4  
5 **PARTIES**

6 2. In answer to paragraph 2, Defendant admits the allegations therein.

7 3. In answer to paragraph 3, Defendant admits the allegations therein.

8 **JURISDICTION**

9 4. In answer to paragraph 4, Defendant admits that Plaintiff seeks damages within  
10 the jurisdictional limits of the 101st Judicial District of Dallas County, Texas, but alleges that  
11 the U.S. District Court for the Northern District of Texas has jurisdiction over the parties and  
12 subject matter of the controversy under 28 U.S.C. § 1441(b) (diversity) and Defendant filed a  
13 Notice of Removal on October 31, 2016, accordingly. Defendant denies committing any  
14 wrongful acts within this District or otherwise.

15 **VENUE**

16 5. In answer to paragraph 5, Defendant admits that Plaintiff seeks damages within  
17 Dallas County, Texas, but alleges that the U.S. District Court for the Northern District of  
18 Texas, Dallas Division, is the proper venue under 28 U.S.C. §§ 1441(a) and 1441(b), and  
19 Defendant filed a Notice of Removal on October 31, 2016, accordingly. Defendant denies  
20 committing any wrongful acts within this District or otherwise.

21 **BACKGROUND FACTS**

22 6. In answer to paragraph 6, Defendant admits the allegations therein.

23 7. In answer to paragraph 7, Defendant admits the allegations therein.

24 8. In answer to paragraph 8, Defendant lacks sufficient information to form a  
25 belief as to the truth or falsity of the allegations of paragraph 8 since no copy of the contract  
26 was attached to Plaintiff's Petition, and therefore denies the same.

27 9. In answer to paragraph 9, Defendant denies each and every allegation therein.

28 10. In answer to paragraph 10, Defendant denies each and every allegation therein.

1           11. In answer to paragraph 11, Defendant denies each and every allegation therein.

2           12. In answer to paragraph 12, Defendant denies each and every allegation therein.

3  
4                   **FIRST CAUSE OF ACTION**  
5                   **(Breach of Contract)**

6           13. In answer to paragraph 13, incorporates its responses to each and every allegation  
7 contained above with the same force and effect as if fully set forth herein.

8           14. In answer to paragraph 14, Defendant admits that an agreement was made  
9 between Plaintiff and Defendant but denies that it breached or committed any wrongful acts  
10 related to the agreement, and Defendant incorporates its responses to each and every allegation  
11 contained above with the same force and effect as if fully set forth herein.

12           15. In answer to paragraph 15, Defendant denies each and every allegation therein.

13                   **SECOND CAUSE OF ACTION**  
14                   **(Quantum Meruit)**

15           16. In answer to paragraph 16, Defendant incorporates its responses to each and every  
16 allegation contained above with the same force and effect as if fully set forth herein.

17           17. In answer to paragraph 17, Defendant denies each and every allegation therein.

18                   **THIRD CAUSE OF ACTION**  
19                   **(Suit on a Sworn Account)**

20           18. In answer to paragraph 18, Defendant incorporates its responses to each and every  
21 allegation contained above with the same force and effect as if fully set forth herein.

22           19. In answer to paragraph 19, Defendant specifically denies each and every  
23 allegation therein.

24           20. In answer to paragraph 20, Defendant specifically denies each and every  
25 allegation therein.

26           The allegations contained in paragraphs 18-20 alleging a sworn account are specifically  
27 denied as the alleged debt is not just, true or due. Nor have all lawful off-sets been accounted  
28 for. Defendant specifically denies that the Plaintiff furnished services of the quality and type it  
represented. Defendant specifically denies that the amount of the account is due to Plaintiff as

1 alleged and further denies that all just and lawful offsets, payments, and credits have been  
2 allowed.

3  
4 **CONDITIONS PRECEDENT**

5 21. In answer to paragraph 21, Defendant denies each and every allegation therein.

6 **ATTORNEY'S FEES**

7 22. In answer to paragraph 22, Defendant denies each and every allegation therein.

8 **INTEREST**

9 23. In answer to paragraph 23, Defendant denies each and every allegation therein.

10 **REQUESTS FOR DISCLOSURE**

11 24. In answer to paragraph 24, Defendant admits that Plaintiff has requested  
12 disclosures pursuant to Texas Rule of Civil Procedure 194, but alleges that the request is not  
13 applicable as this action was removed to the U.S. District Court for the Northern District of  
14 Texas, Dallas Division, under 28 U.S.C. § 1441(b), on October 31, 2016.

15 **II. FURTHER ANSWER AND AFFIRMATIVE DEFENSES**

16 By way of further Answer and as affirmative defenses, Defendant denies that it is liable  
17 to Plaintiff on any of the claims alleged and denies that Plaintiff is entitled to damages, interest,  
18 attorneys' fees, costs or to any relief whatsoever, and states as follows:

19 **First Affirmative Defense –Estoppel**

20 1. Ascendium's claims are barred by the doctrine of estoppel.

21 **Second Affirmative Defense – Unclean Hands**

22 2. The relief sought by Ascendium is barred under the doctrine of unclean hands.

23 **Third Affirmative Defense – Laches**

24 3. Ascendium, because of its conduct, is barred from any recovery under the  
25 doctrine of laches

26 **Fourth Affirmative Defense - Failure to State a Cause of Action**

27 4. The Petition fails to state a claim upon which relief can be granted.

28 **Fifth Affirmative Defense – Waiver**

1           5.       Ascendium has waived any claims it now alleges against One Jet.

2                   **Sixth Affirmative Defense - Failure to Mitigate Damages**

3           6.       Ascendium has failed to reasonably mitigate its alleged damages, if any.

4                   **Seventh Affirmative Defense – Plaintiff’s Consent/Ratification**

5           7.       If any conduct alleged in the Petition actually occurred, it occurred with  
6 Ascendium’s consent, acquiescence and/or ratification.

7                   **Eighth Affirmative Defense – Plaintiff’s Negligence**

8           8.       If Ascendium suffered any injury or damage as alleged in the Petition, such  
9 injury or damage was caused, in whole or in part, by the carelessness and negligence of  
10 Ascendium or its agents and Ascendium should therefore recover nothing from One Jet, or any  
11 recovery otherwise due from One Jet should be reduced to reflect the percentage to which the  
12 fault and negligence of Ascendium or its agents caused and contributed to the injuries or  
13 damages claimed to have been suffered.

14                   **Ninth Affirmative Defense - Failure to State a Claim for Attorney Fees**

15           9.       Ascendium has failed to state facts or allege a claim sufficient for an award of  
16 attorneys’ fees.

17                   **Tenth Affirmative Defense - Statute of Limitations**

18           10.      Ascendium has failed to abide by the statutes of limitation applicable to its  
19 Petition.

20                   **Eleventh Affirmative Defense - Uncertainty**

21           11.      Ascendium’s claims, if any, against One Jet are uncertain, ambiguous and  
22 unintelligible.

23                   **Twelfth Affirmative Defense – Performance**

24           12.      One Jet’s obligations, if any, to Ascendium have been fully performed.

25                   **Thirteenth Affirmative Defense – Offset**

26           13.      One Jet is entitled to offsets in an amount to be ascertained upon proof at time  
27 of trial, which diminish or defeat any claim by Ascendium.  
28

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2  
3 **Fourteenth Affirmative Defense – Unjust Enrichment**

4 14. Ascendium would be unjustly enriched if allowed to recover on the Petition.

5 **Fifteenth Affirmative Defense – Excuse of Non-Performance**

6 15. One Jet's performances were excused as a result of Ascendium's pre-existing  
7 breach or failure to perform its obligations.

8 **Sixteenth Affirmative Defense – Failure of Conditions Precedent**

9 16. One Jet's performances were excused due to the failure of conditions precedent  
10 to its obligation to perform.

11 **Seventeenth Affirmative Defense – Justification**

12 17. One Jet's alleged conduct was justified, as a result of Ascendium's breach, or  
13 failure to perform the conditions, of agreements and/or contracts, if any, between it and One  
14 Jet.

15 **Eighteenth Affirmative Defense – Accord and Satisfaction**

16 18. One Jet's obligations to Ascendium, if any, were excused as a result of an  
17 accord and satisfaction.

18 **Nineteenth Affirmative Defense – Lack of Notice**

19 19. Ascendium failed to give notice of its claims to One Jet as required by law.

20 **Twentieth Affirmative Defense – Causation**

21 20. The Petition fails to show that any alleged acts or omissions of One Jet caused  
22 the injuries or damages, if any, claimed by Innovative Automation.

23 **Twenty-First Affirmative Defense – Prevention of Performance**

24 21. Ascendium's actions prevented One Jet's required performance, if any.

25 **Twenty-Second Affirmative Defense – Choice of Law**

26 22. One Jet expressly reserves any defenses that may be available to it under any  
27 applicable laws of other jurisdictions, in accordance with applicable choice of law rules.  
28

**ADDITIONAL DEFENSES**

23. Defendant reserves the right to raise additional affirmative defenses based on information learned or obtained during discovery prior to or at the time of trial.

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff takes nothing by way of its Petition;
2. That the Petition, and each and every purported claim for relief therein, be dismissed with prejudice;
3. That Defendant be awarded its costs of suit incurred herein, including attorneys' fees and expenses; and
4. For such other and further relief as the Court deems just and proper.

**III. COUNTERCLAIM**

Defendant and Counterclaimant ONE JET, INC. f/k/a PRIMAIR, INC. (hereinafter "One Jet" or "Counterclaimant") for its counterclaim against Plaintiff and Counterdefendant TRACY GRIFFITH CONSULTING LLC d/b/a ASCENDIUM GROUP (hereinafter "Ascendium" or "Counterdefendant") alleges as follows:

**INTRODUCTION**

1. Counterclaimant brings this action for breach of contract against Ascendium under Texas State Law.

2. One Jet and Ascendium were parties to a written agreement (the "Agreement") drafted by Ascendium regarding its provision of consulting services, namely central call center services, for One Jet's business.

3. Ascendium breached the Agreement by failing to provide the level of services required by the Agreement as it failed to provide adequate central call center services due to its negligence, insufficient staffing and lack of resources to meet the needs of One Jet's business, thus causing One Jet a substantial loss of business and potential revenue.

4. As a result of Ascendium's breaches, One Jet's business was significantly damaged due to Ascendium's failure to provide the level of services necessary to meet the needs

1 of its business, as required under the Agreement. As a result, One Jet has suffered monetary  
2 damages as well as harm to its business reputation. One Jet seeks recovery from Ascendium  
3 for all of these damages.

#### 4 **THE PARTIES**

5 5. One Jet is a California corporation with its principal place of business at 245  
6 First Street, Suite 1800, Cambridge, Massachusetts 02142.

7 6. Upon information and belief, Tracy Griffith Consulting LLC d/b/a Ascendium  
8 Group is a limited liability company organized and existing under the law of the State of  
9 Texas, with its principal place of business at 3913 Treemont Circle, Colleyville, Texas 76034.  
10 Upon information and belief, the sole member of the company is Tracy Griffith, a resident of  
11 the State of Texas.

#### 12 **JURISDICTION AND VENUE**

13 7. This Court has original jurisdiction over the counterclaim pursuant to 28 U.S.C.  
14 § 1332(a)(2) because the amount in controversy exceeds \$75,000 and complete diversity of  
15 citizenship exists between Counterclaimant One Jet (a California corporation), and  
16 Counterdefendant Ascendium (a Texas limited liability company with its sole member being a  
17 resident of the State of Texas).

18 8. This Court has personal jurisdiction over Ascendium by virtue, *inter alia*, of  
19 Ascendium having elected to file its Petition in Dallas County, Texas, which is located within  
20 this District.

21 9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a  
22 substantial part of the events or omissions giving rise to the claim herein occurred in this  
23 District.

#### 24 **GENERAL ALLEGATIONS**

25 10. On or around October 2, 2014, One Jet Tower entered into an Agreement with  
26 Ascendium regarding the provision of airline consulting services for One Jet's business.  
27  
28



1 Pursuant to the Agreement, Ascendium was to provide central call center services for One Jet's  
2 business, and One Jet was to pay Ascendium a monthly fee for its services.

3 11. Beginning around January 2016, and continuing throughout July 2016,  
4 Ascendium failed to perform its obligations under the terms of the Agreement. Ascendium  
5 breached the Agreement by, among other things, missing a substantial number of calls, failing  
6 to provide sufficient staffing and resources to field the calls for One Jet's business, and failing  
7 to provide the overall level of service required by the Agreement.

8 12. During the time when Ascendium was failing to provide adequate central call  
9 center services, One Jet repeatedly notified Ascendium of the problems with the significant  
10 number of missed calls, poor services, performance issues, and other breaches of the  
11 Agreement, and requested that Ascendium cure its breaches and perform its obligations under  
12 the Agreement.

13 13. However, Ascendium did not cure its breaches. Ascendium's performance  
14 issues and failure to provide the requisite level of services under the Agreement continued  
15 through July 2016, and throughout that time, One Jet's business continued to suffer harm due  
16 to Ascendium's breaches.

17 **CAUSE OF ACTION**  
18 **(Breach of Contract)**

19 14. Counterclaimant realleges and incorporates by reference each of the allegations  
20 on paragraphs 1 through 13 of its Counterclaim.

21 15. The Agreement was a binding contract among its parties.

22 16. Counterclaimant performed all conditions, covenants, and promises required by  
23 it in accordance with the Agreement.

24 17. Ascendium breached the Agreement by, among other things, failing to provide  
25 adequate central call center services, failing to field a substantial number of calls, failing to  
26 provide sufficient staff or resources to meet the needs of One Jet's business, and/or  
27 performing the services required by the Agreement negligently, thus causing One Jet a  
28 substantial loss of business and potential revenue.

1           18. As a direct and proximate result of Ascendium's breaches of the Agreement,  
2 Counterclaimant has suffered damages in excess of \$272,750.  
3

4                           **IV. PRAYER FOR RELIEF ON COUNTERCLAIM**

5 WHEREFORE, One Jet prays that this Court:

- 6           1. Enter judgment in favor of One Jet and against Ascendium on each of the claims  
7 set forth in Plaintiff's Petition;  
8           2. Dismiss Plaintiff's Petition with prejudice;  
9           3. Award One Jet damages for its claim of breach of contract against Ascendium;  
10          4. Award One Jet costs of suit incurred herein, attorneys' fees, and pre-judgment  
11 and post-judgment interest; and  
12          5. Grant One Jet such other and further legal and equitable relief as the Court  
13 deems just and proper.

14 Respectfully Submitted,

15  
16 Dated: November 7, 2016

SERGI & ASSOCIATES, P.C.

17  
18 By: /s/ David Sergi

19 DAVID SERGI  
20 Attorneys for Defendant One Jet, Inc.  
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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was served by U.S. mail on counsel of record on this 7th day of November 2016:

Calli Turner, Esq.  
Gardere Wynne Sewell  
1601 Elm Street,  
Suite 3000  
Dallas, TX 75201  
(972) 701-7000  
*Attorneys for Plaintiff Tracy Griffith Consulting LLC*

/s/ David Sergi

DAVID SERGI

**VERIFICATION**


BEFORE ME, the undersigned authority, personally appeared MATT MAGUIRE, who after being by me duly sworn, deposed as follows:

“My name is MATT MAGUIRE. I am at least 18 years of age and of sound mind. I am personally acquainted with the facts alleged in the foregoing Defendant One Jet, Inc.’s Original Answer and Verified Denial and Counterclaim, which are true and correct. The allegations contained in paragraphs 18-20 of Plaintiff’s Original Petition, alleging a sworn account, are specifically denied as the alleged debt is not just, true or due.”

  
\_\_\_\_\_  
MATT MAGUIRE

SUBSCRIBED AND SWORN TO BEFORE ME on November 7<sup>th</sup>, by

M. H. Maguire.

  
\_\_\_\_\_  
Notary Public, State of New York

